

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-7098 ABC (SHx)	Date	July 15, 2014
Title	Perfect 10, Inc. v. Giganews, Inc., et al.		

Present: The Honorable	Audrey B. Collins, United States District Judge		
Angela Bridges	Not Present		N/A
Deputy Clerk	Court Reporter / Recorder		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
None		None	
Proceedings:	ORDER <u>DENYING</u> MOTION PLAINTIFF’S MOTION FOR SANCTIONS (In Chambers)		

Pending before the Court is Plaintiff Perfect 10, Inc.'s ("Plaintiff") Motion for Sanctions (docket no. 325). For reasons unknown, as of the date of this order, Defendants Giganews, Inc., et al., ("Giganews") did not file an opposition even though one was due June 30. In such circumstances, courts often construe the lack of an opposition as consent to the Motion, and grant unopposed Motions on that basis. Clearly, failing to oppose the Motion was risky. Nevertheless, the Court has reviewed the Motion and, for the reasons briefly stated herein, finds that it is meritless.

Perfect10 argues that Giganews misled the Court with declarations stating that it would have had to undertake an onerous manual Message-ID extraction process to process Perfect10's DMCA notices. Perfect10 contends that this omission was misleading because Giganews's MIMO newsreader has a program that allows it to extract Message-IDs "automatically," the implication being that processing Perfect10's DMCA notices could have been far less onerous than Giganews represented had Giganews used the program to extract Message-IDs. Perfect10 further states that this Court's January 29, 2014 Order ("Order") denying its Motion for Summary Judgment relied heavily on Giganews's allegedly misleading assertion that extracting the Message-IDs was too onerous a burden to place on it, rather than on Perfect10. Because the Order relied on that misleading and incorrect assertion, Perfect10 argues, the Court should sanction Giganews, and it would seem, reconsider that aspect of the Order. Perfect10's argument is entirely unpersuasive.

First, it is not entirely clear that Giganews "misled" the Court by not revealing MIMO's automatic Message-ID extraction program because it is not clear that Giganews could have used such a program in an efficient way, especially considering all of the previous steps required to process Perfect10's DMCA notices. See Order 13:19-18:19. Relatedly, even if Giganews could have used the program to "automatically" extract Message-IDs, Giganews would have had to take a number of non-automated and relatively labor-intensive steps prior to that last step (automatic Message-ID extraction) such that its burden to process Perfect10's DMCA notices would still be great. Id. (describing steps to process Perfect10's DMCA notices). For example, Giganews would still have to interpret Perfect10's verbose notices, run the searches described therein, compare its results to those Perfect10 obtained on a certain date by comparing lists or images, and then perhaps run the Message-ID extraction program on

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the matches. Perfect10's process still burdens Giganews with manually "identifying" infringing images.

In addition, although the Order did observe that extracting Message-IDs manually is a very burdensome process, the Order also noted that either party could write a program to do it automatically. Thus, the possibility that the Message-ID extraction step of the process could be streamlined (by either side) was a possibility that the Order expressly noted.

Finally, as suggested by all of the above, the Order described as burdensome the entirety of the process Giganews would have to undertake to process Perfect10's DMCA notices, not just the Message-ID extraction step of the process. Thus, Perfect10 exaggerates the Order's reliance on the burdens associated solely with manually extracting Message-IDs.

The Court **DENIES** Perfect10's ill-considered and overreaching Motion for Sanctions.

IT IS SO ORDERED.

Initials of Preparer AB